

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Neil McHugh,

Plaintiff,

v.

Town of Marana, a municipal corporation, and
Marana Town Council, duly elected officials of
the Town of Marana,

Defendants,

CV 04-680 TUC DCB

O R D E R

On January 27, 2006, the Honorable Bernardo P. Velasco, United States Magistrate Judge, filed a Report and Recommendation ("Recommendation") in this action. The Recommendation advised the Court to grant the Defendant's Motion for Summary Judgment (document 14).

The Magistrate Judge recommended that this Court find that the Plaintiff failed to raise a material issue of fact to support his claim of entitlement or his claim that Defendant acted impartially. The Magistrate Judge recommended that this Court find the takings claim premature because Plaintiff failed to bring an inverse condemnation action against the Defendants. The Magistrate Judge correctly found that Plaintiff failed to bring his claim under 42 U.S.C. § 1983 and erroneously brought his takings claim directly under the Fifth Amendment to the United States Constitution. Lastly, the Magistrate Judge correctly concluded that Plaintiff has no cause of action under the substantive due process clause.

The Court follows the Magistrate Judge's recommendation, adopts the findings and opinions in the Recommendation, and grants Defendant's Motion for Summary Judgment.

1 The parties were sent copies of the Recommendation and instructed that, pursuant to 28
2 U.S.C. § 636(b), they had 10 days to file written objections to the Recommendation. *See also*,
3 Federal Rule of Civil Procedure 72(b) (party objecting to the recommended disposition has ten
4 (10) days to file specific, written objections). To date, no objections have been filed.

5 Pursuant to 28 U.S.C. § 636(b), this Court makes a *de novo* determination as to those
6 portions of the Report and Recommendation to which there are objections. 28 U.S.C. §
7 636(b)(1)(C) ("A judge of the court shall make a de novo determination of those portions of the
8 report or specified proposed findings and recommendations to which objection is made.") To
9 the extent that no objection has been made, arguments to the contrary have been waived.
10 *McCall v. Andrus*, 628 F.2d 1185, 1187 (9th Cir. 1980) (failure to object to Magistrate's report
11 waives right to do so on appeal); *see also*, Advisory Committee Notes to Fed. R. Civ. P. 72
12 (citing *Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974) (when no
13 timely objection is filed, the court need only satisfy itself that there is no clear error on the face
14 of the record in order to accept the recommendation).

15 The Court considers the Recommendation to be thorough and well-reasoned; it is neither
16 clearly erroneous nor contrary to law. *United States v. Remsing*, 874 F.2d 614, 617-618 (9th
17 Cir. 1989). The Recommendation shall therefore be accepted pursuant to 28 U.S.C. §
18 636(b)(1). The Court adopts the recommendation of the Magistrate Judge. For the reasons
19 stated in the Recommendation, the Court grants Defendant's Motion for Summary Judgment.

20 **Accordingly,**

21 **IT IS ORDERED** that the Report and Recommendation (document 27) is adopted as
22 the opinion of the Court.

23 **IT IS FURTHER ORDERED** that the Motion for Summary Judgment(document 14)
24 is GRANTED.


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1 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter Judgment
2 accordingly.

3 DATED this 13th day of March, 2006.

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8 David C. Bury
9 United States District Judge
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